IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 502 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IMTIAZ AHMED FAKIR MOHAMMED MEMON

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 502 of 2002

MR RAJESH K SHAH for Petitioner No. 1

MR AD OZA, PUBLIC PROSECUTOR for Respondent No. 1

HL PATEL ADVOCATES for Respondent No. 2,4-7

..... for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/02/2003

ORAL JUDGEMENT

This is a revision application filed by the

petitioner above named - original informant in Sessions Case No. 154 of 2002 challenging the judgment and order dated 16/11/02 recorded by the learned Additional Sessions Judge (Fast Track Court) at Mehsana under which the learned trial Judge acquitted the present contesting respondents and also directed that notice be issued to the present petitioner under Section 250 of the Code of Criminal Procedure, 1973 (for short, "the Code") as to why he should not be directed to pay compensation to the contesting respondents.

2. At the instance of the present petitioner a first information report was recorded against the present contesting respondents on 13/09/01 before Vijapur Police Station at Crime Register No. 245 of 2001 for offences punishable under Section 436, 452, 395 IPC and other offences.

3. After concluding the investigation, chargesheet was filed and the case was committed to the court of Sessions. At the trial, evidence was recorded and at the conclusion of the evidence, the contesting respondents came to be acquitted of the said charge. While acquitting the contesting respondnets the learned trial Judge passed an order for issuance of notice to the present petitioner to show cause as to why he should not be directed to pay compensation to the contesting respondents under Section 250 of the said Code.

4. Feeling aggrieved by the aforesaid judgment and acquittal order of the trial court, the petitioner original informant has preferred this revision application before this Court, under Section 397 read with Section 401 of the said Code.

5. It has been mainly contended that there was sufficient evidence on record for convicting the contesting respondents. That the trial court has not properly appreciated the evidence on record. That the witnesses have supported the case of the prosecution and that there was sufficient material before the trial court for convicting the contesting respondents.

6. The petitioner has also contended that looking to the nature of evidence on record, the trial court has committed an error in the eye of law in issuing notice under Section 250 of the said Code to the present petitioner to show cause as to why the present petitioner should not pay compensation to the contesting respondents. That therefore, even that part of the judgment and order of the trial court is illegal.

7. On the aforesaid considerations, the petitioner has contended that the judgment and order of the trial court are illegal and perverse and require the interference of this Court. The petitioner has, therefore, prayed to allow the revision application, to convict the contesting respondents and to set aside the above order of Show Cause Notice under Section 250 of the said Code.

8. Rule was issued and in response to the service of notice of rule, Mr.V H Patel has appeared for the contesting respondents and Mr.A D Oza, learned PP has appeared on behalf of the State of Gujarat.

9. I have heard Mr.R K Shah, learned advocate for the petitioner, Mr.V H Patel for the contesting respondents and Mr.A D Oza learned PP for the State.

10. The learned advocate for the petitioner has taken me through the judgment of the trial court in order to show that the witnesses have given evidence in support of the prosecution but their evidence has not been believed to be true by the trial court.

11. At the same time, it is also required to be considered that the State has not preferred acquittal appeal challenging the said judgment and acquittal order of the trial court. The present revision application has been filed by the petitioner - original informant. When the State has not preferred acquittal appeal then the power, function and jurisdiction of this Court exercising revisional jurisdiction are very limited. This court cannot simply brush aside the findings of fact recorded by the trial court. Even while hearing acquittal appeal, this Court is required to restraint itself from brushing aside the findings of fact recorded by the trial court. It is well settled that the accused are always presumed to be innocent. The presumption may even be stronger in case of an acquittal appeal. Moreover, the trial court had every opportunity to witness the dimeanor of the witnesses tendering evidence before the trial court. Therefore, due weight is required to be given to the findings of fact recorded by the trial court.

12. In this case we find that the trial court has come to a finding that the presence of the concerned respondents has not been satisfactorily established by the prosecution and therefore, the contesting respondents came to be acquitted.

13. Having regard to the facts and circumstances of the case, considering the evidence on record, considering the fact that no acquittal appeal has been preferred and considering that this is a revisional jurisdiction, I am of the opinion that it is not possible for this Court to disturb the said findings of fact recorded by the trial court. In other words, it is not possible to hold that the judgment and order of the trial court are against the weight of evidence on record. In other words, the said judgment and acquittal order of the trial court cannot be treated to be illegal and perverse. In that view of the matter, it is not open to this Court to disturb the findings of fact recorded by the trial court on account of which, the trial court has reached to a conclusion that the contesting respondents deserve acquittal.

14. So far, the compensation part is concerned, Mr.V H Patel learned advocate appearing for the contesting respondents has made a statement that the order of issuing notice may be set aside by allowing the revision application to that extent.

15. During the course of argument, it is found that on the one hand the petitioner does not appear to be serious in getting the acquittal appeal set aside. Sameway, the contesting respondents do not appear to be serious in getting compensation. At the same time, it is not possible to hold, from the set of evidence on record, that the incident as alleged has not taken place at all and the contesting respondents have been involved with some ulterior motive. In that view of the matter, I am of the view that this is not a fit case wherein the compensation could be awarded to the contesting respondents. It is more so when they are not interested in getting compensation. In that view of the matter, on the one hand the acquittal is required to be confirmed and on the other hand, the order of the trial court issuing Show Cause Notice is required to be set aside.

16. For the foregoing reasons, this revision application is partly allowed. The judgment and order of the trial court for issuance of Show Cause Notice to the present informant to show cause as to why he should not be directed to pay compensation to the contesting respondents under section 250 of the said Code is set aside and the revision application is allowed to that extent. The remaining part of the judgment and acquittal order of the trial court is hereby confirmed and the present revision application challenging the said part of the judgment and acquittal order is dismissed to that extent. Rule is made absolute partly as aforesaid.

(D. P. Buch, J.)

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